

STATE OF MICHIGAN  
COURT OF APPEALS

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SHERRY WILLIAMS AND SCOTT AUSTIN  
WILLIAMS,

UNPUBLISHED  
January 31, 2006

Plaintiffs/Counter-Defendants-  
Appellees,

v

FARM BUREAU MUTUAL INSURANCE  
COMPANY,

No. 257938  
Ingham Circuit Court  
LC No. 03-000241-ND

Defendant/Counter-Plaintiff/Cross-  
Plaintiff-Appellant,

and

CHARLES ROTHNEY AND PATRICIA  
ROTHNEY,

Defendants/Cross-Defendants-  
Appellees.

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Before: Bandstra, P.J., and Fitzgerald and White, JJ.

PER CURIAM.

Defendant Farm Bureau Mutual Insurance Company appeals as on leave granted<sup>1</sup> the order denying its motion for summary disposition in this declaratory judgment action arising out of damages that occurred when a fire destroyed property owned by defendants Charles and Patricia Rothney. Plaintiff Sherry Williams and her eleven-year-old son, plaintiff Scott Williams, were sued in an underlying action as the parties allegedly responsible for the damages. Farm Bureau provided homeowner's insurance to Sherry Williams. We reverse.

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<sup>1</sup> This Court denied defendant's application for leave to appeal. The Supreme Court entered an order remanding this case to this Court for consideration as on leave granted. *Williams v Farm Bureau Mutual Ins Co*, 471 Mich 878, 686 NW2d 746 (2004).

## I

The Rothneys used the building to store personal property. On June 16, 2001, Scott Williams and three of his minor friends entered the Rothney's building without permission.<sup>2</sup> While the boys were inside the building, a fire was started that completely destroyed the building and its contents. Although there is disparity among the boys as to who started the fire, based on the boys' statements it appears that either T.J. Browe or Scott Williams lit the fire in a cardboard box. The boys all attempted to extinguish the fire by smothering it with various materials located in the building. The boys left the building and reported the fire at a local police station. Morris Police Chief Al Sweet concluded that the fire was started with a lighter. Neither Chief Sweet nor Shiawassee County Sheriff's Department Lt. Douglas Powell felt that the boys intended to start the fire. But Michigan State Police Sgt. Kathleen Taylor of the Fire Marshal Division attested that her investigation of the scene revealed that the fire was the result of arson and, therefore, an intentionally set fire.

Farm Bureau initially provided counsel to plaintiffs in the action brought by the Rothneys, but later withdrew its representation and declined to provide coverage on the ground that the fire was the result of an intentional or criminal act. The Rothneys obtained a judgment against plaintiffs in the amount of \$300,000.

Plaintiffs filed the present declaratory judgment action requesting a finding that Farm Bureau was obligated to defend plaintiffs in the underlying action. The trial court declined to grant summary disposition in favor of either party in light of the court's finding that disputed issues of material fact<sup>3</sup> prevented the court from deciding whether the criminal acts exclusion in the policy applies in this case.

## II

Farm Bureau argues that the trial court erred in denying its motion for summary disposition because there is no genuine issue of material fact that the fire arose from Scott Williams' criminal act of breaking and entering into the building.

Issues involving the proper interpretation of insurance contracts are reviewed de novo. *Allstate Ins Co v McCarn (After Remand)(McCarn II)*, 471 Mich 283, 288; 683 NW2d 20 (2002). An insurance policy must be enforced in accordance with its terms. *Allstate Ins Co v McCarn (McCarn I)*, 466 Mich 277, 280; 645 NW2d 20 (2002). The policy's terms are given their commonly used meanings unless clearly defined in the policy. *Singer v American States Ins (After Remand)*, 245 Mich App 370, 374; 631 NW2d 34 (2001). Determination of the scope of coverage is a separate inquiry from whether coverage is negated by an exclusion.<sup>4</sup> *Heniser v*

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<sup>2</sup> According to Chief Sweet, Scott Williams had been warned by the local police to stay out of the building on previous occasions.

<sup>3</sup> Specifically, the court found that a question of fact existed with regard to whether the fire was intentionally set.

<sup>4</sup> Although Farm Bureau answered and argued that there was no "occurrence" as that term was  
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*Frankenmuth Mutual Ins*, 449 Mich 155, 172; 534 NW2d 502 (1995). Although exclusionary clauses in insurance policies are strictly construed in favor of the insured, clear and specific exclusions must be given effect because an insurance company cannot be liable for a risk it did not assume. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 567, 489 NW2d 431 (1992).

The homeowners' policy Farm Bureau issued to Sherry Williams includes a criminal acts exclusion that states that personal liability coverage does not apply to "bodily injury or property damage arising out of a criminal act of an insured." The criminal acts exclusion in this case is unambiguous insofar as it clearly precludes coverage for bodily injury or property damage arising out of a criminal act of the insured.<sup>5</sup> Scott Williams' alleged criminal act is proscribed by MCL 750.115(1), which states in pertinent part:

Any person who breaks and enters or enters without breaking, any . . . warehouse, . . . or other building . . . or structure used or kept for public or private use, . . . or any other structure, whether occupied or unoccupied, without first obtaining permission to enter from the owner or occupant, agent, or person having immediate control thereof, is guilty of a misdemeanor.

There is no dispute in this case that Scott Williams entered the Rothneys' building without permission. Consequently, he violated the criminal statute. The clear and unambiguous language of the insurance policy excepts bodily injury or property damage arising out of the breaking and entering without regard to whether the injuries or damages were intended or reasonably expected. Even assuming that the resulting fire was an accident, a broad criminal acts exclusion like the one in this case "eliminates from coverage more than just intentional crimes or injuries intended or reasonably expected." Given Scott Williams' admission that he entered the building without permission and the all-encompassing criminal acts exclusion at issue, the insured could not reasonably have expected coverage under these circumstances.

Reversed and remanded for entry of judgment in favor of Farm Bureau. Jurisdiction is not retained.

/s/ Richard A. Bandstra  
/s/ E. Thomas Fitzgerald  
/s/ Helene N. White

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(...continued)

defined in the policy of insurance and therefore no coverage, Farm Bureau has not challenged on appeal the scope of coverage.

<sup>5</sup> Unlike other intentional/criminal acts exclusions where the exclusion applies only if the insured acted intentionally or criminally and the resulting injury was reasonably expected to result from the intentional or criminal act, see, e.g., *Allstate Ins Co v McCarn (After Remand (McCarn II))*, 471 Mich 283, 288; 683 NW2d 656 (2004), the criminal acts exclusion in this case does not include such "reasonably anticipated" language and is more broad and excludes all criminal acts, without regard to whether the resulting injury was accidental or intended. See *Allstate Ins Co v Fick*, 226 Mich App 197, 203-203; 572 NW2d 265 (1997) (a broad criminal acts exclusion eliminates from coverage more than just intentional crimes or injuries intended or reasonably expected).